

BILL NO. G-92-06-03

GENERAL ORDINANCE NO. G- 30-92

AN ORDINANCE REPEALING
THE LOCAL CURFEW LAW AS
PREEMPTED BY STATE LAW.

WHEREAS, prior to 1946, the Common Council of Fort Wayne adopted an ordinance that made it unlawful for anyone under fifteen years of age to be upon the public streets between the hours of 11:00 P.M. and 4:00 A.M; and

WHEREAS, I.C. 31-6-4-2 makes it a curfew violation for anyone under fifteen years of age to be upon the public streets between the hours of 11:00 P.M. and 5:00 A.M; and

WHEREAS, the local curfew law is in conflict with state law and should be repealed;

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF FORT WAYNE, INDIANA:

SECTION 1. Sections 8-6, 8-7, 8-9 and 8-10 of the Code of Laws of the City of Fort Wayne are hereby repealed.

SECTION 2. That this Ordinance shall take effect upon passage and any and all necessary approval by the Mayor.

CR Edmund
Council Member

APPROVED AS TO FORM
AND LEGALITY

J. Timothy McCauley
J. TIMOTHY MCCAULAY, CITY ATTORNEY

dings. [IC 31-6-3-4, as added by Acts 10; P.L.153-1984, § 2; P.L.272-1989, § 4.]

Collateral References. Necessity or propriety of appointment of independent guardian for child who is subject of paternity proceedings. 70 A.L.R.4th 1033.

st child in juvenile court prohib-
tile court adjudication. — (a) A
nvicted of a crime, except a crime
child has been waived to a court

riminal by reason of an adjudication
udication be considered a conviction
es not impose any civil disability

e justice system does not disqualify
ation, examination, or appointment.
P.L. 136, § 1; 1979, P.L. 276, § 11;

ECISIONS

delinquent in that she had committed acts
that would be theft if she were charged as an
adult. Engle v. State, 506 N.E.2d 3 (Ind.
1987).

The disposition of a juvenile matter is not
admissible as impeachment evidence, since
the disposition of a juvenile does not consti-
tute a criminal conviction. Jordan v. State,
512 N.E.2d 407, rehearing denied, 516
N.E.2d 1054 (Ind. 1987).

ER 4
LDREN IN NEED OF SERVICES

- SECTION.
- inquiry — Request for court order to take child into custody — Rights of parties.
 - 11-6-4-13.5. [Repealed.]
 - 11-6-4-13.6. Initial hearing on petition — Child in need of services.
 - 11-6-4-14. Factfinding hearing — Continuance — Child in juvenile detention facility.
 - 11-6-4-15. Predispositional reports.
 - 11-6-4-15.3. Dispositional hearing and decree.
 - 11-6-4-15.4. Child in need of services or delinquent child — Dispositional decrees.
 - 11-6-4-15.5. [Repealed.]
 - 11-6-4-15.6. Delinquent child — Wardship to department of correction — Confinement.
 - 11-6-4-15.7. Emancipation of child.

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| SECTION. | SECTION. |
| 31-6-4-15.9. Delinquent child — Dispositional decrees. | or custodian. |
| 31-6-4-16.1. Decree prohibiting direct or indirect contact with child — Distribution and deposit of copies. | 31-6-4-18. Financial responsibility — Probation user's fee. |
| 31-6-4-17. Participation of parent, guardian, | 31-6-4-19. Periodic review of disposition — Reports — Hearings — Discharge of child. |

- 31-6-4-1. Delinquent act — Delinquent child.** — (a) A child commits a delinquent act if, before attaining the age of eighteen (18), the child:
- (1) Commits an act that would be an offense if committed by an adult, except an act committed by a person over which the juvenile court lacks jurisdiction under IC 31-6-2-1.1;
 - (2) Leaves home without reasonable cause and without permission of the parent, guardian, or custodian, who requests the child's return;
 - (3) Violates the compulsory school attendance law (IC 20-8.1-3);
 - (4) Habitually disobeys the reasonable and lawful commands of the child's parent, guardian, or custodian;
 - (5) Commits a curfew violation; or
 - (6) Violates IC 7.1-5-7 (concerning minors and alcoholic beverages).
- (b) A child is a delinquent child if, before attaining the age of eighteen (18), the child:
- (1) Commits a delinquent act defined by subsection (a)(1); or
 - (2) Commits a delinquent act defined by subsection (a)(2), (a)(3), (a)(4), (a)(5), or (a)(6) and needs care, treatment, or rehabilitation that:
 - (A) The child is not receiving;
 - (B) The child is unlikely to accept voluntarily; and
 - (C) Is unlikely to be provided or accepted without the coercive intervention of the court. [IC 31-6-4-1, as added by Acts 1978, P.L. 136, § 1; 1979, P.L. 276, § 12; 1980, P.L. 182, § 4; 1981, P.L. 266, § 3; P.L.283-1985, § 2; P.L.176-1986, § 2; P.L.297-1987, § 1; P.L.1-1990, § 281.]

Cited: In re J.S.F., 535 N.E.2d 150 (Ind. App. 1989); Millspaugh v. Wabash County Dep't of Pub. Welfare, 746 F. Supp. 832 (N.D. Ind. 1990).

Collateral References. Tort liability of public authority for failure to remove parentally abused or neglected children from parent's custody. 60 A.L.R.4th 942.

Defense of infancy in juvenile delinquency proceedings. 83 A.L.R.4th 1135.

- 31-6-4-2. Curfews — Local option.** — (a) It is a curfew violation for a child fifteen (15), sixteen (16), or seventeen (17) years of age to be in a public place:
- (1) Between 1 A.M. and 5 A.M. on Saturday or Sunday;
 - (2) After 11 P.M. on Sunday, Monday, Tuesday, Wednesday, or Thursday; or
 - (3) Before 5 A.M. on Monday, Tuesday, Wednesday, Thursday, or Friday.
- (b) It is a curfew violation for a child under fifteen (15) years of age to be in a public place after 11 P.M. or before 5 A.M. on any day.
- (c) This section does not apply to a child who is:
- (1) Accompanied by his parent, guardian, or custodian;
 - (2) Accompanied by an adult specified by his parent, guardian, or custodian; or
 - (3) Participating in, going to, or returning from:
 - (A) Lawful employment;
 - (B) A school sanctioned activity; or
 - (C) A religious event.

(d) Whenever a city, town, or county determines that any curfew time established by subsection (a) or (b) is later than is reasonable for public safety under the conditions found to exist in that city, town, or county, the city, town, or county may, by ordinance, advance the curfew time within its jurisdiction by not more than two (2) hours. [IC 31-6-4-2, as added by Acts 1978, P.L. 136, § 1; 1981, P.L. 266, § 4; P.L.202-1991, § 1.]

Amendments. The 1991 amendment substituted "two (2) hours" for "one (1) hour" in subsection (d).

Effective Dates. P.L.202-1991 contains no effective date provision. Pursuant to IC

1-1-3-3, the amendment takes effect July 1, 1991.

Collateral References. Validity, construction, and effect of juvenile curfew regulations. 83 A.L.R.4th 1056.

31-6-4-3. Child in need of services — Failure to provide medical treatment because of religious beliefs — Use of reasonable corporal punishment — Lawful practice or teaching of religious beliefs not limited. — (a) A child is a child in need of services if before the child's eighteenth birthday:

- (1) The child's physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child's parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision;
 - (2) The child's physical or mental health is seriously endangered due to injury by the act or omission of the child's parent, guardian, or custodian;
 - (3) The child is the victim of a sex offense under IC 35-42-4-1, IC 35-42-4-2, IC 35-42-4-3, IC 35-42-4-4, IC 35-42-4-7, IC 35-45-4-1, IC 35-45-4-2, or IC 35-46-1-3;
 - (4) The child's parent, guardian, or custodian allows the child to participate in an obscene performance (as defined by IC 35-49-2-2 or IC 35-49-3-2);
 - (5) The child's parent, guardian, or custodian allows the child to commit a sex offense prohibited by IC 35-45-4;
 - (6) The child substantially endangers the child's own health or the health of another;
 - (7) The child's parent, guardian, or custodian fails to participate in a disciplinary proceeding in connection with the student's improper behavior, as provided for by IC 20-8.1-5-7, where the behavior of the student has been repeatedly disruptive in the school; or
 - (8) The child is a missing child (as defined in IC 10-1-7-2);
- and needs care, treatment, or rehabilitation that the child is not receiving, and that is unlikely to be provided or accepted without the coercive intervention of the court.

(b) An omission under subdivision (a)(2) is an occurrence in which the parent, guardian, or custodian allowed that person's child to receive any injury that the parent, guardian, or custodian had a reasonable opportunity to prevent or mitigate.

(c) A custodian under subsection (a) includes any person responsible for the child's welfare who is employed by a public or private residential school or foster care facility.

(d) When a parent, guardian, or custodian fails to provide specific medical treatment for a child because of the legitimate and genuine practice of the parent's, guardian's, or custodian's religious beliefs, a rebuttable presumption arises that the child is not a child in need of services because of such failure. However, this presumption does not prevent a juvenile court from ordering, when the health of a child requires, medical services from a physician licensed to practice medicine in Indiana.

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promulgated. All persons so arrested shall be taken before the
of the court within thirty hours after arrest or as soon after
the lapse of thirty hours as the court may be available; provided,
that such action is not interfered with by violence or threats of
violence. (Ord. G-118-71, § 4.)

Sec. 8-5. Violations; penalties.

Any person willfully violating the regulations promulgated
under the authority of this article and any person defying any
police officer engaged in enforcing such regulations, shall be guilty
of a misdemeanor. (Ord. G-118-71, § 5.)

ARTICLE II. CURFEW FOR PERSONS UNDER
FIFTEEN YEARS OF AGE.

For state law as to delinquent, dependent and neglected children generally, and
the jurisdiction of juvenile courts, see IC 1971, §§ 31-5-7-1 to 31-5-7-25.

Sec. 8-6. Prohibited on streets during certain hours;
exceptions.

It shall be unlawful for any person under fifteen years of age
to be or remain in or upon any of the streets or public grounds in
the city at night between the hours of 11:00 P. M. and 4:00 A. M.,
standard time, from the first day of April to the first day of
November, and from 11:00 P. M. to 4:00 A. M. from the first day
of November to the first day of April of each year, unless such
person is accompanied by his parent, guardian or other person
having the legal custody of such minor, or is in performance of an
errand or duty directed by such parent, guardian or other person
having the care and custody of such minor, or whose employment
makes it necessary to be upon such streets or public grounds
during the nighttime after such specified hours. (Code 1946, ch. 7,
§ 1.)

Sec. 8-7. Liability of parent or guardian.

It shall be unlawful for any parent, guardian or other person
having the legal care and custody of any person under fifteen years
of age to allow or permit any child, ward or any person under such

age while in his legal custody to go or be in or upon any of the streets or public grounds of the city within the time prohibited in section 8-6 unless there exists reasonable necessity therefor. (Code 1946, ch. 7, § 2.)

Sec. 8-8. Arrest without warrant; notification of parent.

Each member of the police force, while on duty, is authorized to arrest without warrant any person wilfully violating the provisions of section 8-6 and retain such person for a reasonable time, in which complaint can be made and a warrant issued and served. No person under fifteen years of age arrested under this article shall be placed in confinement until his parents have been notified and their wishes ascertained, and they shall have refused to be held responsible for the observance of this article by the minor. (Code 1946, ch. 7, § 3.)

For state law as to criminal arrest without warrant, see IC 1971, §§ 35-1-13.1 and 35-1-21-1.

Sec. 8-9. Duty of mayor after parents have refused responsibility.

It shall be the duty of the mayor, upon the arrest of any minor where the parents or guardian have refused to become responsible for the minor for violation of the provisions of section 8-6, to inquire into the facts of the arrest and the condition of circumstances of such minor, and if it shall appear that such minor, for want of proper parental care, is growing up in mendicancy or vagrancy, incorrigibility, cause the proper proceedings to be had and taken as authorized and provided by law in such cases. (Code 1946, ch. 7, § 4.)

Sec. 8-10. Violations; penalties.

Any person violating any of the provisions of this article upon conviction, be fined in any sum not exceeding twenty dollars. (Code 1946, ch. 7, § 5.)

Read the first time in full and on motion by Edmonds, and duly adopted, read the second time by title and referred to the Committee on Regulation (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Common Council Council Conference Room 128, City-County Building, Fort Wayne,, Indiana, on _____, the _____ day of _____, 19____, at _____ o'clock _____ M., E.S.T.

DATED: 6-9-92 Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Edmonds, and duly adopted, placed on its passage. PASSED LOST by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<u>9</u>			
BRADBURY	<u>✓</u>			
EDMONDS	<u>✓</u>			
GIAQUINTA	<u>✓</u>			
HENRY	<u>✓</u>			
LONG	<u>✓</u>			
LUNSEY	<u>✓</u>			
RAVINE	<u>✓</u>			
SCHMIDT	<u>✓</u>			
TALARICO	<u>✓</u>			

DATED: 6-23-92 Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL) (SPECIAL) (ZONING) ORDINANCE RESOLUTION NO. 9-30-92 on the 23rd day of June, 1992

ATTEST: (SEAL)
Sandra E. Kennedy Thomas E. Henry
SANDRA E. KENNEDY, CITY CLERK PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 24th day of June, 1992, at the hour of 11:30 o'clock PM, M., E.S.T.
Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 25th day of June, 1992, at the hour of 4:15 o'clock PM, M., E.S.T.
PAUL HELMKE
PAUL HELMKE, MAYOR

DIGEST SHEET

TITLE OF ORDINANCE GENERAL ORDINANCE

DEPARTMENT REQUESTING ORDINANCE POLICE DEPARTMENT

SYNOPSIS OF ORDINANCE CURRENT ORDINANCE IS IN CONFLICT WITH STATE
LAW.

92-92-06-03

EFFECT OF PASSAGE COMPLIANCE WITH STATE LAW.

EFFECT OF NON-PASSAGE ORDINANCE REMAINS IN CONFLICT WITH STATE
LAW.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) _____

ASSIGNED TO COMMITTEE (PRESIDENT) _____

*Hold
1 week*

BILL NO. G-92-06-03

REPORT OF THE COMMITTEE ON
REGULATIONS

CLETUS R. EDMONDS, CHAIR
MARK E. GIAQUINTA, VICE CHAIR
RAVINE, SCHMIDT

WE, YOUR COMMITTEE ON REGULATIONS TO WHOM WAS
REFERRED AN (ORDINANCE) (~~RESOLUTION~~) REPEALING THE LOCAL CURFEW
LAW AS PREEMPTED BY STATE LAW

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID
(ORDINANCE) (~~RESOLUTION~~)

DO PASS

DO NOT PASS

ABSTAIN

NO REC

[Handwritten signature]

DATED:

6-23-92

Sandra E. Kennedy
City Clerk